



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Mr. Jack Wu

**MAR 30 2017**

Newport Beach, CA 92663

RE: MUR 7225  
(formerly RR 16L-06)  
Rohrabacher for Congress, *et al.*

Dear Mr. Wu:

On March 21, 2017, the Federal Election Commission ("the Commission") found that there is reason to believe you knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) and 11 C.F.R. §§ 102.9, 102.15, and 104.3, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and the Commission's regulations. This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup> For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Shanna Reulbach, the attorney assigned to this matter, at (202) 694-1638 or [sreulbach@fec.gov](mailto:sreulbach@fec.gov).

On behalf of the Commission,



Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Jack Wu**

**MUR 7225  
(formerly RR 16L-06)**

**I. INTRODUCTION**

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities, pursuant to 52 U.S.C. § 30109(a)(2). Based on this information, the Commission finds reason to believe that Jack Wu, the former treasurer of Rohrabacher for Congress (the "Committee"), knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. §§ 102.9, 102.15, and 104.3 of the Commission's regulations by converting Committee funds for personal use, commingling Committee funds with his own, and failing to keep complete records and file accurate reports with the Commission.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Wu's Embezzlement Scheme**

The Committee is the principal campaign committee for longtime California Congressman Dana Rohrabacher. In 2005, Wu became treasurer of the Committee.<sup>1</sup>

The Commission has information indicating that, on or about May 20, 2015, the Committee's new fundraising vendor discovered a significant discrepancy between the cash on hand reported by Wu in the Committee's most recent disclosure report (\$190,872) and the actual balance in the Committee's bank account (\$87).<sup>2</sup> After a brief investigation, the Committee

<sup>1</sup> Amended Statement of Organization, Committee to Re-Elect Congressman Dana Rohrabacher (Feb. 24, 2005) (amending the treasurer information to name Wu as the treasurer).

<sup>2</sup> RAD Referral of Rohrabacher for Congress, 16L-06 (Apr. 14, 2016) ("Referral") at 3.

1 confirmed that Wu had been making unauthorized disbursements. Wu admitted that he had  
2 misappropriated funds and eventually gave the Committee a spreadsheet summarizing  
3 unauthorized activity in the amount of \$173,500 during 2014 and 2015.<sup>3</sup> The Committee fired  
4 Wu and filed a complaint against him with the Orange County District Attorney's Office (the  
5 "DA's Office" or "DA").

6 The Commission also has information establishing that, after an investigation and  
7 forensic audit of the Committee, the DA's Office concluded that Wu had embezzled \$238,347.15  
8 from the Committee by writing checks to himself and his companies, "W. Jane Company" and  
9 "Wubell." For the most part, Wu concealed his scheme by failing to disclose his unauthorized  
10 withdrawals on the Committee's reports; although, on occasion, he would disclose his  
11 withdrawals as seemingly legitimate disbursements, such as payments to the U.S. Treasury.<sup>4</sup>  
12 Whenever the Committee was in danger of bouncing a legitimately drawn check, Wu would  
13 deposit funds from his personal account or his businesses' accounts to ensure that the Committee  
14 had enough money to cover its operating expenses.<sup>5</sup> The DA's Office also discovered that Wu  
15 was using the Committee's funds, at least in part, to pay back a former employer for a previous  
16 embezzlement scheme that the employer had agreed not to report to the police if Wu made  
17 restitution.

<sup>3</sup> See *id.* at 2-3.

<sup>4</sup> For one example of how Wu disguised his unauthorized disbursements as payments to the U.S. Treasury, see the Committee's 2013 October Quarterly Reports. For that reporting period, Wu disclosed three payments to the U.S. Treasury for "payroll taxes." See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher (Jan. 31, 2014). Two of the three disbursements were proper, but the third was actually a check that Wu wrote to himself. See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher – NOW Rohrabacher for Congress (June 2, 2016) (changing one of the payroll-tax disbursements to an unauthorized disbursement to Wu).

<sup>5</sup> Referral at 3 & Attach. 2 (charts listing deposits made by Wu "to cover [u]nauthorized [w]ithdrawals").

1 In February 2016, Wu was arrested and charged with 3 counts of felony grand theft by  
2 embezzlement and 21 counts of felony forgery for the crimes against the Committee and his  
3 other former employer.<sup>6</sup> One of the embezzlement counts alleged that “[o]n or about and  
4 between February 18, 2009 and May 18, 2015,” Wu unlawfully took property from the  
5 Committee. The other two charges stemmed from Wu’s embezzlement from his other employer.  
6 The 21 forgery charges then alleged that Wu wrote and passed false checks.<sup>7</sup> Wu pled guilty to  
7 all of the charges on January 17, 2017 and will be sentenced on April 19, 2017.<sup>8</sup> The  
8 Commission is aware of information indicating that he had not made any restitution to the  
9 Committee as of the date of the Referral.

10 **B. The Committee’s Response to Wu’s Embezzlement**

11 In addition to reporting Wu’s activities to the Orange County DA’s Office, the  
12 Committee informed the Commission that Wu had made unauthorized and undisclosed  
13 disbursements and that, as a result, its disclosure reports were inaccurate.<sup>9</sup> The Committee  
14 eventually filed amended reports for all of 2014 and parts of 2013 and 2015. The 2013, 2014,  
15 and 2015 reports revealed, in total, \$39,095.79 of deposits from Wu’s accounts and \$226,425.48

<sup>6</sup> Felony Complaint Warrant, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Feb. 1, 2016) (“Criminal Complaint”); *see also* Docket, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct.) (last visited Jan. 19, 2017) (“Docket Report”) (stating that Wu was arraigned on February 3, 2016).

<sup>7</sup> Criminal Complaint, *supra* note 6. For each forgery charge, the complaint provided a date range for when Wu passed a specified false check. *See id.* Many of the ranges encapsulated dates on which the Committee reported unauthorized disbursements. *Compare id.*, with Referral, Attach. 2, and RAD Supplemental Memorandum (June 13, 2016), Attach. 1. It therefore appears that some of the false checks Wu passed were written from the Committee’s account.

<sup>8</sup> Docket Report, *supra* note 6. The Commission also examined Wu’s written plea agreement, which was almost entirely a boilerplate form that Wu initialed to acknowledge his waiver of certain rights. *See* Advisement & Waiver of Rights for a Felony Guilty Plea, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Jan. 17, 2017) (“Plea Agreement”). Its “Factual Basis for Guilty Plea” did not provide any facts beyond those alleged in the complaint. *See id.*, Attach. A.

<sup>9</sup> Referral at 2-3.

1 of unauthorized disbursements. Below is a list of the amount of unauthorized activity disclosed  
2 on each amended report and the original July 2015 Quarterly Report.<sup>10</sup>

Amended Report	Deposits from Wu's Accounts	Unauthorized Disbursements
2013 October Quarterly	\$0	\$1,859.24
2013 Year-End	\$0	\$16,733.16
2014 April Quarterly	\$0	\$29,572.68
2014 12-Day Pre-Primary	\$0	\$13,334.27
2014 July Quarterly	\$0	\$27,583.40
2014 April Quarterly	\$0	\$63,228.61
2014 12 Day Pre-General	\$0	\$7,015.12
2014 30 Day Post-General	\$0	\$19,316.58
2014 Year-End	\$1,829.91	\$12,437.99
2015 April Quarterly	\$25,900.00	\$25,594.43
2015 July Quarterly (original)	\$11,365.88	\$9,750.00
<b>TOTAL</b>	<b>\$39,095.79</b>	<b>\$226,425.48</b>

3 **C. Legal Analysis**

4 The Act requires a committee, through its treasurer, to keep an accurate account of  
5 receipts, disbursements, and cash-on-hand balances.<sup>11</sup> To accomplish this, the Act imposes on  
6 committees a series of recordkeeping and reporting requirements to be executed by the  
7 committee's treasurer. The Act provides that committees must record the name and address of  
8 every person to whom a disbursement is made, and the date, amount, and purpose of the  
9 disbursement, and retain records (e.g., receipt, cancelled check, invoice) related to each  
10 disbursement in excess of \$200.<sup>12</sup>

11 Committee reports must disclose: (1) the amount of cash-on-hand at the start of the  
12 reporting period; (2) the total amount of receipts; (3) the identity of any person who contributes

<sup>10</sup> Referral, Attach. 2 (providing charts showing the unauthorized activity disclosed on the Committee's Amended 2015 April Quarterly Report and 2015 July Quarterly Report); RAD Supplemental Memorandum at 1 & Attach. 1 (providing the total amount of unauthorized activity and charts showing the unauthorized activity disclosed on the Committee's 2013 and 2014 amended reports).

<sup>11</sup> 52 U.S.C. §§ 30102(c), 30104(b); see also 11 C.F.R. §§ 104.3, 104.14(d).

<sup>12</sup> 52 U.S.C. § 30102(c)(5); see also 11 C.F.R. § 102.9(b)(1)-(2).

1 more than \$200 in the election cycle, and the date and amount of his contribution(s); (4) the total  
2 amount of disbursements; (5) the identity of any person to whom the committee disburses over  
3 \$200 during the election cycle, together with the date, amount, and purpose of the  
4 expenditure(s); and (6) the amount of cash-on-hand at the close of the reporting period.<sup>13</sup>

5 The Act also states that a committee's funds "shall be segregated from, and may not be  
6 commingled with, the personal funds of any individual."<sup>14</sup> Relatedly, the Act prohibits  
7 individuals from converting contributions to a political committee for personal use.<sup>15</sup> "Personal  
8 use" means any use of funds in a campaign account of a federal candidate to fulfill a  
9 commitment, obligation, or expense of any person that would exist irrespective of the  
10 candidate's campaign.<sup>16</sup>

11 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*  
12 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his personal  
13 capacity when it appears that he, while serving as treasurer, may have knowingly and willfully  
14 violated the Act or regulations.<sup>17</sup> A violation of the Act is knowing and willful when the "acts  
15 were committed with full knowledge of all the relevant facts and a recognition that the action is  
16 prohibited by law."<sup>18</sup> This does not require proving knowledge of the specific statute or

<sup>13</sup> 52 U.S.C. § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b); *see also* Fed. Election Comm'n, Form 3 Report of Receipts and Disbursements for an Authorized Committee (May 2016).

<sup>14</sup> 52 U.S.C. § 30102(b)(3); *see also* 11 C.F.R. § 102.15.

<sup>15</sup> 52 U.S.C. § 30114(b)(1).

<sup>16</sup> *Id.* § 30114(b)(2).

<sup>17</sup> Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

<sup>18</sup> 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

1 regulation the respondent allegedly violated.<sup>19</sup> Rather, it is sufficient to demonstrate that a  
2 respondent “acted voluntarily and was aware that his conduct was unlawful.”<sup>20</sup> This awareness  
3 may be shown through circumstantial evidence, such as a “defendant’s elaborate scheme for  
4 disguising” her actions, or other “facts and circumstances from which the jury reasonably could  
5 infer [the defendant] knew her conduct was unauthorized and illegal.”<sup>21</sup>

6 It is undisputed that, while serving as treasurer for the Committee, Wu withdrew at least  
7 \$226,425 of Committee funds and did not disclose the withdrawals on reports filed with the  
8 Commission. Wu signed each Committee report filed between October 2013 and April 2015,<sup>22</sup>  
9 and a comparison of the Committee’s original and amended reports during that time period  
10 reveals that he falsified the amount of cash-on-hand, omitted contributions and disbursements,  
11 and provided false information about the recipient and purpose of certain disbursements.<sup>23</sup> The  
12 elaborate steps Wu took to conceal his misappropriation of funds is evidence that he “acted  
13 voluntarily and was aware that his conduct was unlawful.”<sup>24</sup> Even more definitively, in pleading  
14 guilty to the forgery charges, Wu admitted that he acted “with the intent to defraud” and that he  
15 knew the checks he passed were false.<sup>25</sup> We therefore conclude that Wu knowingly and willfully

<sup>19</sup> See *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

<sup>20</sup> *Id.* (internal quotation marks omitted).

<sup>21</sup> *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

<sup>22</sup> See Reports, 2013-2015, Rohrabacher for Congress. By signing the reports, Wu certified that “to the best of [his] knowledge and belief,” each report was “true, correct and complete.” *Id.*

<sup>23</sup> See Referral, Attach. 2; RAD Supplemental Memorandum, Attach. 1.,

<sup>24</sup> *Hopkins*, 916 F.2d at 214-15; *Danielczyk*, 917 F. Supp. 2d at 579.

<sup>25</sup> Criminal Complaint, *supra* note 6; Plea Agreement, Attach. A, *supra* note 8.



1 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to file accurate reports with the  
2 Commission.

3 Wu knowingly and willfully violated 52 U.S.C. § 30102(c) and 11 C.F.R. § 102.9 by  
4 failing to keep an account of disbursements made from the Committee's funds. As referenced  
5 above, the Committee did not appear to have a record of Wu's unauthorized activity until Wu  
6 and the DA's Office provided a list of the unauthorized disbursements.<sup>26</sup>

7 Additionally, by using Committee funds to pay restitution to his previous employer for  
8 another embezzlement scheme, Wu knowingly and willfully violated 52 U.S.C. § 30114(b)(1) by  
9 converting Committee funds to personal use. As the restitution payments were an obligation  
10 completely unrelated to Rohrabacher's campaign, Wu's payments resulted in his "personal use"  
11 of Committee funds.<sup>27</sup>

12 Finally, Wu knowingly and willfully violated 52 U.S.C. § 30102(b)(3) and 11 C.F.R.  
13 § 102.15 by commingling personal and Committee funds. By depositing funds from his personal  
14 and business accounts into the Committee's account, he commingled funds within the  
15 Committee's account.<sup>28</sup> Likewise, by writing checks to himself and his businesses, he likely  
16 commingled funds within his own accounts.

17 In sum, the Commission finds reason to believe Wu knowingly and willfully violated 52  
18 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) and 11 C.F.R. §§ 102.9, 102.15, and

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<sup>26</sup> See Referral at 3.

<sup>27</sup> 52 U.S.C. § 30114(b)(2).

<sup>28</sup> See Factual & Legal Analysis at 12-13, MUR 6179 (Ward) (finding reason to believe that a treasurer unlawfully commingled funds "by writing checks from his personal bank account and depositing them into committee accounts").

- 1 104.3 by converting Committee funds for personal use, commingling Committee funds with his
- 2 own, and failing to keep complete records and file accurate reports with the Commission.